Filed 2/4/19 Beaudin v. Stewart Title Guaranty Co. CA1/5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

ALLEN BEAUDIN et al., Plaintiffs and Appellants, v. STEWART TITLE GUARANTY COMPANY et. al., Defendants and Respondents.	A152769 (Sonoma County Super. Ct. No. SCV257624)

Allen Beaudin and Mika Beaudin Tanioka (the Beaudins) appeal the trial court's entry of judgment in favor of Stewart Title Guaranty Company (STGC) and Stewart Title of California Company (STCA) (collectively, the Stewart Title Entities). The Beaudins claimed the Stewart Title Entities failed to disclose the true nature of an easement over their property in Santa Rosa, California. The trial court granted the Stewart Title Entities' motion for summary judgment determining the preliminary report and the policy of title insurance excluded coverage for any loss resulting from the easement. We affirm.

FACTUAL AND PROCEDURAL HISTORY

We summarize the facts relevant to the issues on appeal. We provide additional factual and procedural details in the discussion of the Beaudins' specific claims.

A. *The Subdivision, Sale, and the Shared Road Maintenance Agreement*

In 2010, Martin McClure and Patricia McClure (the McClures) subdivided their land in Santa Rosa, California into three parcels, referred to as "Parcel 1" or APN 50,

"Parcel 2" or APN 53, and the "Designated Remainder" or APN 52. Parcel maps of the subdivision indicate Parcel 2—the parcel the Beaudins purchased—is adjacent to Grange Road, but the only way to access Grange Road from Parcel 1 or the Designated Remainder is via a roadway called the Sunny Meadows Trail which runs through Parcel 2 close to its northern boundary or via a roadway close to Parcel 2's southern boundary.

In November 2012, the McClures sold the Designated Remainder (or APN 52) to Siddharth and Kimberly Alexander (the Alexanders). The grant deed referred to various easements, including a nonexclusive easement for access over Parcels 1 and 2, and an easement for primary access and utility purposes along the southern border of Parcel 2.

About two months later, in January 2013, the McClures sold Parcel 1 (or APN 50) to Henry Turmon and Jacqueline Little (Turmon and Little). This grant deed referred to easements for access over portions of Parcel 2 and the Designated Reminder.

Around the same time, Turmon and Little (the purchasers of Parcel 1) and the Alexanders (the purchasers of the Designated Remainder) entered into a "Shared Road Maintenance Agreement," recorded in the Sonoma County Recorder's office in February 2013. This agreement stated the Alexanders had "an option to use for the purposes of ingress and egress, either the driveway across" their "Southern Property Line (the 'Southern Access') . . . or [the] Sunny Meadows Trail ('Sunny Meadows Access'), provided that [the Alexanders] . . . share[d] all costs of engineering, developing, improving, constructing and maintaining [the] Sunny Meadows Access . . . ." (Bold type omitted.) The Alexanders "irrevocably elect[ed] to use the Southern Access and not the Sunny Meadows Access[.]" As stated more fully a page later, "(except for unrestricted emergency vehicle access . . .), the [Alexanders] hereby irrevocably elect to use the Southern Access as their exclusive point of vehicular ingress and egress for all domestic, construction and agricultural access to [the Designated Remainder] . . . , and not to use the Sunny Meadows Access[.]"

In December 2013, the McClures sold Parcel 2 (or APN 53) to the Beaudins. The Beaudins' property consists of approximately five acres of land. The grant deed

associated with this sale referred to easements over Parcel 1 and the Designated Remainder.

B. *The Preliminary Report and the Policy of Title Insurance*

Before completing their purchase, the Beaudins obtained a preliminary report from STCA. It provided that STCA was "prepared to issue . . . a Policy . . . of Title Insurance describing the land and the estate . . . , insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referenced to as an Exception on Schedule B or not excluded from coverage pursuant to the printed Schedules, Conditions, and Stipulations of said Policy forms."

The preliminary report also stated: "The printed Exceptions and Exclusions from the coverage and Limitations on covered Risks of said policy . . . are set forth in Exhibit A attached. . . . [¶] Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters, which are not covered under the terms of the title insurance policy and should be carefully considered. [¶] It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land. [¶] This report . . . is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby."

Under "Schedule B" of the report, it stated in item 4 that exceptions for coverage included easements for "Emergency Access . . . Appurtenant to the Designated Remainder" affecting the "Easterly portion of the Southerly line," and a "30 foot Emergency Access Easement" affecting the "Southerly portion." The parcel map also identified the southern easement as an emergency access easement or "EAE." Notably, under item 7, it stated that exceptions to coverage included "[m]atters contained in that certain document entitled 'Shared Road Maintenance Agreement' dated January 15, 2013, executed by Henry Turmon, Jacqueline P. Little, Recorded: February 4, 2013, as Instrument No. 2013-011809 of Official Records. [¶] Reference is hereby made to the public record for full particulars."

STGC issued the Beaudins a policy of title insurance effective December 13, 2013. Like the preliminary report, under item 4 of "Schedule B," it excepted from coverage emergency access easements affecting the "Easterly portion of the Sourtherly line" and the "Southerly portion." Also like the preliminary report, it excepted from coverage "[m]atters contained in" the " 'Shared Road Maintenance Agreement.' "

C. *The Beaudins' Claim and its Denial*

In May or June 2014, the Beaudins asserted a claim under their policy of title insurance based on their belief the Alexanders' easement over the southern portion of the Beaudins' property was restricted to " 'emergency access,' " not " 'regular access.' " STGC denied the claim. STGC acknowledged the "preliminary report did not reflect as a separate exception to title that grant deed" that conveyed "to the Alexanders an easement for 'primary access and private utility purposes' over the southern portion of the insured parcel." However, STGC pointed out it did exclude from coverage matters contained in the Shared Road Maintenance Agreement, which contained information that the Alexanders could use the southern easement for regular access to their property. According to STGC, "[t]he fact the 2012 grant deed was not reflected as a separate exception did not result in any additional burden or loss as the insured parcel was already burdened by the same exact easement as set out in the Shared Road Maintenance Agreement."

D. *The Proceedings Below*

On August 24, 2015, the Beaudins sued the Stewart Title Entities asserting causes of action for: (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing; (3) negligence and constructive fraud; (4) fraud and deceit; and (5) unjust enrichment/restitution.

On May 1, 2017, the Stewart Title Entities moved for summary judgment, or in the alternative, summary adjudication of the Beaudins' claims. The court held a hearing on the motion on July 19, 2017. On August 28, 2017, the court granted the motion. The court determined in part as follows:

"In this case, Plaintiffs' breach of contract claim is founded on their allegations that Defendants[] breached the title policy by denying Plaintiffs' claim, which in turn was based on Defendants' alleged failure to disclose the Southern Access easement in the preliminary title report." But "the title report and the resulting policy contained an exception from coverage, as stated in Schedule B, that expressly identified and excepted coverage for all matters contained in the 'Shared Road Maintenance Agreement' that was recorded in the public record on February 4, 2013 as Instrument No. 2013-011809. Because the Southern Access easement is expressly identified in the Shared Road Maintenance Agreement, coverage for any loss resulting from this easement is expressly excluded from the title policy and is a compete defense to any cause of action for breach of contract."

With regard to the second cause of action, the court found the Beaudins relied "on the same allegations as [their] defective breach of contract claim and for the same reasons that its contract claim is deficient, its breach of the implied covenant claim fails as well."[1] The court entered judgment in favor of the Stewart Title Entities and against the Beaudins. The Beaudins appeal.

DISCUSSION

The Beaudins argue the Stewart Title Entities breached the policy of insurance, that the exception from coverage in the preliminary report for " 'matters contained in . . . [the] "Shared Road Maintenance Agreement" ' " did not provide a complete defense to their claim for breach of contract, and that there were material issues of fact as to whether the Beaudins suffered a loss because of the "missed easement." The Beaudins also argue there were triable issues of material fact as to whether the Stewart Title Entities breached the covenant of good faith and fair dealing by failing to investigate their claim and summarily denying it. We disagree and affirm.

[1] The court also granted summary judgment as to the remaining causes of action for negligence, constructive fraud, fraud/deceit, and unjust enrichment/restitution. The Beaudins do not challenge these rulings on appeal.

I.

Principles of Title Insurance and Contract Interpretation

Title insurance is defined by statute as "insuring, guaranteeing or indemnifying owners of real . . . property . . . against loss or damage suffered by reason of: [¶] (a) Liens or encumbrances on, or defects in the title to said property; [¶] . . . [¶] (c) Incorrectness of searches relating to the title of real . . . property." (Ins. Code, § 12340.1.) The function of title insurance is to protect against the possibility of liens or other items not found in the title search or disclosed in the preliminary report. (*Siegel v. Fidelity Nat. Title Ins. Co.* (1996) 46 Cal.App.4th 1181, 1191.)

Preliminary reports are " 'reports furnished in connection with an application for title insurance and are offers to issue a title policy subject to the stated exceptions set forth in the reports and such other matters as may be incorporated by reference therein.' (Ins. Code, § 12340.11.)" (*Siegel v. Fidelity Nat. Title Ins. Co.*, *supra*, 46 Cal.App.4th at p. 1190.) " '[A] title insurer prepares a preliminary report to limit its own risk—by locating and excluding items from coverage . . . .' " (*Lee v. Fidelity National Title Ins. Co.* (2010) 188 Cal.App.4th 583, 596 (*Lee*).) Preliminary reports "are not abstracts of title, nor are any of the rights, duties or responsibilities applicable to the preparation and issuance of an abstract of title applicable to the issuance of any report. Any such report shall not be construed as, nor constitute, a representation as to the condition of title to real property, but shall constitute a statement of the terms and conditions upon which the issuer is willing to issue its title policy, if such offer is accepted." (Ins. Code, § 12340.11.)

The "interpretation of an insurance policy is a question of law." (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 18.) "In reviewing de novo a superior court's summary adjudication order in a dispute over the interpretation of the provisions of a policy of insurance, the reviewing court applies settled rules governing the interpretation of insurance contracts. . . . [¶] ' "While insurance contracts have special features, they are still contracts to which the ordinary rules of contractual interpretation apply." [Citations.] "The fundamental goal of contractual interpretation is to give effect to the

mutual intention of the parties." [Citation.] "Such intent is to be inferred, if possible, solely from the written provisions of the contract." [Citation.] "If contractual language is clear and explicit, it governs." [Citation.]' [Citation.]" (*Powerine Oil Co., Inc. v. Superior Court* (2005) 37 Cal.4th 377, 390.)

II.

The Stewart Title Entities Did Not Breach the Insurance Policy

Here, the trial court summarily adjudicated the Beaudins' breach of contract claim in favor of the Stewart Title Entities because the title policy excluded from coverage matters contained in the Shared Road Maintenance Agreement. Independently reviewing the record, we discern no triable issue of material fact as to whether the Stewart Title Entities breached their contract with the Beaudins.[2] We begin with a review of the Beaudins' allegations. (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1253 [pleadings frame issues to be decided on summary judgment].)

A. *The Beaudins' Complaint and the Court's Ruling*

The Beaudins alleged they obtained a preliminary report and a policy of title insurance from the Stewart Title Entities. Both documents referred to the owners of the Designated Remainder having an " 'Emergency Access Easement' " over the " 'Southerly portion' " of the property the Beaudins purchased. As acknowledged by the Beaudins, both documents also excluded from coverage " '[m]atters contained in that certain document entitled "Shared Road Maintenance Agreement," dated January 15, 2013 . . . .' "

[2] STCA filed a separate respondent's brief arguing it acted as the escrow holder, not the title insurer, and that by appealing only the first two causes of action for breach of contract and breach of the implied covenant of good faith and fair dealing, the Beaudins waived any claim against STCA. The Beaudins concede the argument because they fail to respond to it in their reply brief. Nevertheless, the complaint suggests the Beaudins asserted their first two causes of action against all defendants, the Stewart Title Entities filed one motion for summary judgment and, in granting their motion, the trial court did not distinguish between STCA and STGC. The record does not clearly distinguish between the roles and duties of these two entities, so we assume without deciding that the two causes of action at issue also apply to STCA.

The Beaudins alleged the Stewart Title Entities breached the contract by denying their claim after failing to disclose " 'as a separate exception to title that grant deed recorded November 5, 2012 . . . wherein the Alexanders acquired their property from the McClures. . . . [It] conveys to the Alexanders an easement for 'primary access and private utility purposes' over the southern portion of the insured parcel.' " (Bold type omitted.) This "omitted Easement Grant Deed did not restrict the Easement to 'emergency use only.' " (Bold type omitted.) The Beaudins first "learned of the undisclosed nature of an egregiously burdensome easement running through their front yard in or about May 2014." This undisclosed easement damaged the Beaudins "by forcing them to suffer a full time dual residential and full time commercial vineyard access road easement across their yard . . . ." (Bold type omitted.) The Beaudins alleged the Stewart Title Entities failed to fulfill their "disclosure and coverage duties."

The Stewart Title Entities moved for summary judgment on the ground that both the preliminary report and the policy of title insurance excepted from coverage matters contained in the Shard Road Maintenance Agreement. The trial court agreed with the Stewart Title Entities. We discern no error in the trial court's ruling.

B. *The Policy's Exception for Matters Contained in the Shared Road Maintenance Agreement Precludes Coverage of the Beaudins' Claim*

Here, the clear and explicit language of both the preliminary report and the policy of title insurance excepted from coverage "[m]atters contained in that certain document entitled 'Shared Road Maintenance Agreement' dated January 15, 2013, executed by Henry Turmon, Jacqueline P. Little, Recorded: February 4, 2013, as Instrument No. 2013-011809 of Official Records. [¶] Reference is hereby made to the public record for full particulars."

The Shared Road Maintenance Agreement provided the Alexanders had "an option to use for the purposes of ingress and egress, either the driveway across . . . [their property's] Southern Property line (the 'Southern Access') . . . or [the] Sunny Meadows Trail ('Sunny Meadows Access')." The Alexanders "irrevocably elect[ed] to use the Southern Access as their exclusive point of vehicular ingress and egress for all domestic,

construction and agricultural access to [their property] . . . and not to use the Sunny Meadows Access . . . ."

Before he purchased Parcel 2, Allen Beaudin was emailed a copy of the Shared Road Maintenance Agreement. Allen Beaudin testified he "scanned" the document, but he focused on the fact that it did not require him to contribute to the cost of maintaining the Sunny Meadows Trail. Based on his review of it, he believed the driveway along the southern portion of Parcel 2 "was exclusively for Parcel 2 traffic (human and vehicular) unless there was an 'Emergency.' "

In our view, the language of the preliminary report and the policy of title insurance was clear and explicit. These documents excepted from coverage matters contained in the Shared Road Maintenance Agreement. "Any expectation to the contrary on the part of the [insured] would have been subjective and unreasonable. A party's subjective intent cannot be used to create an ambiguity or a material factual issue." (*Havstad v. Fidelity National Title Ins. Co.* (1997) 58 Cal.App.4th 654, 661.)

Accordingly, to create a triable issue as to whether the Stewart Title Entities breached the insurance contract, it is insufficient for the Beaudins to focus on *another* description of the easement as for emergency access, or on the failure to list as a separate exception the deed granting the Alexanders an easement for "primary access" to the Designated Remainder along the southern portion of the Beaudins' property. Matters contained in the Shared Road Maintenance Agreement were *also* clearly excluded from coverage. It did not require the services of a "professional Title Examiner" to deduce that the Alexanders could use the southern roadway for regular access. The statements in the Shared Road Maintenance Agreement describing the Alexanders' election to use the southern easement for all domestic, construction, and agricultural access were neither "buried" nor "shrouded." That the scope of the Alexanders' permitted use of the southern easement was contrary to the Beaudins' expectations, does not avoid a clear policy exclusion. (*Watamura v. State Farm Fire & Casualty Co.* (1988) 206 Cal.App.3d 369, 371–372 ["the doctrine of satisfying the insured's reasonable expectation of

coverage comes into play only after the court finds a policy exclusion to be ambiguous."].)

In arguing otherwise, the Beaudins rely primarily on *Lee*, *supra*, 188 Cal.App.4th at pages 587–588, in which the court of appeal reversed a trial court's grant of summary judgment in favor of a title insurance company because its preliminary report and policy of title insurance led the plaintiffs to reasonably expect they had purchased and insured two accessor parcels, when in fact they had purchased only one of them.

The Beaudins' reliance on *Lee* is misplaced. In *Lee*, the plaintiffs purchased property identified by two tax assessor parcel numbers. (*Lee*, *supra*, 188 Cal.App.4th at p. 587.) The insurance company issued a preliminary report that "referred repeatedly to both assessor parcels," and that included an assessor's map with arrows pointing to both parcels. (*Id.* at pp. 587–588.) The plaintiffs believed they owned both parcels, and for sixteen years they paid property taxes on both parcels. (*Id.* at pp. 588, 590.) In 2006, the plaintiffs learned from the county assessor that the legal description in their grant deed and the policy of title insurance was correct, but the plaintiffs owned only one of the two parcels. (*Id.* at pp. 591–592.)

The title insurance company denied coverage of the plaintiffs' dispute with a neighbor regarding ownership of the second parcel, relying on the fact that the legal description of the property in the preliminary report and policy of title insurance was correct. (*Lee*, *supra*, 188 Cal.App.4th at pp. 591–592.) The Court of Appeal reversed the trial court's grant of summary judgment in favor of the title insurance company finding that "laypersons like plaintiffs would have no way of knowing from the surveyor's meets and bounds description of the land in their title policy whether [the second assessor's parcel] was covered." (*Id.* at p. 598.) But here, unlike *Lee*, the insurance documents were not ambiguous and understanding them required no specialized knowledge.

In arguing otherwise, the Beaudins refer repeatedly to the policy's "undisclosed" or "missed" easement. They argue the Stewart Title Entities failed to disclose the grant deed that conveyed to the Alexanders an unlimited easement across their property, and they also point out the Shared Road Maintenance Agreement did not create this easement.

But their misunderstanding pertained to the nature of this easement, not its existence. Both the preliminary report and the policy referred to it as for emergency access, but they also expressly excepted from coverage matters contained in the Shared Road Maintenance Agreement. No reader could review this agreement and reasonably conclude the southern easement was limited to emergency access. (*Waller v. Truck Ins. Exchange, Inc.*, *supra*, 11 Cal.4th at pp. 18–19 ["Courts will not strain to create an ambiguity where none exists."].) Nor are we persuaded by the Beaudins' contention that the Stewart Title Entities had a duty to warn them regarding the consequences of the grant deed from the McClures to the Alexanders. (See Ins. Code, § 12340.11 [preliminary reports "are not abstracts of title, nor are any of the rights, duties or responsibilities applicable to the preparation and issuance of an abstract of title applicable to the issuance of any report."].)

The Beaudins argue they had no duty to read other documents referenced in the policy, such as the Shared Road Maintenance Agreement. However, the question presented is whether the Stewart Title Entities breached the policy by denying the Beaudins' claim relating to the Alexanders' use of the southern easement. As explained *ante*, the policy exceptions were not ambiguous; there was no breach of contract. The other authorities cited by the Beaudins do not alter this conclusion. There being no triable issue of material fact, we affirm the trial court's determination that the Stewart Title Entities did not breach the policy by denying the Beaudins' claim relating to the Alexanders' use of the southern easement.[3]

III.

The Stewart Title Entities Did Not Breach the Covenant of Good Faith and Fair Dealing

The Beaudins argue the Stewart Title Entities presented no evidence they investigated the Beaudins' claim in good faith before denying it. But "if there is no *potential* for coverage and, hence, no duty to defend under the terms of the policy, there can be no action for breach of the implied covenant of good faith and fair dealing because

[3] The Beaudins also argue there were triable issues as to whether they suffered a loss. Having found no breach of contract, we do not address this argument.

the covenant is based on the contractual relationship between the insured and the insurer. [Citation.]" (*Waller v. Truck Ins. Exchange, Inc.*, *supra*, 11 Cal.4th at p. 36.) The covenant is "implied as a supplement to the express contractual covenants, to prevent a contracting party from engaging in conduct that frustrates the other party's rights to the benefits of the agreement. [Citation.]" (*Ibid.*) Here, the Stewart Title Entities did not breach the policy of insurance, so they cannot be liable for insurance bad faith. The trial court did not err in summarily adjudicating this claim in favor of the Stewart Title Entities.

DISPOSITION

We affirm. The Stewart Title Entities are entitled to costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

_____
Jones, P.J.

We concur:

_____
Needham, J.

_____
Burns, J.

A152769